

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

1865

JOINT APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 20,832

MICHAEL URGO, Appellant

v.

ROBERT S. McNAMARA, et al, Appellees

Appeal from an Order of the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 19 1967

Nathan J. Paulson
CLERK

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JOINT APPENDIX

Relevant Docket Entries

Complaint	June 15, 1966
Defendants' Motion to Dismiss and for Summary Judgment	October 17, 1966
Plaintiff's Motion for Summary Judgment and Opposition to Defendants' Motion to Dismiss and for Summary Judgment	November 16, 1966

Order granting Defendants' Motion
for Summary Judgment, dismissing
cause, and denying Plaintiff's
Motion for Summary Judgment

December 21, 1966

Notice of Appeal

February 3, 1967

Filed June 15, 1966

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1572-66

MICHAEL URGO
28 Harrison Avenue
North Haledon, New Jersey 07508
Plaintiff

v.

ROBERT S. McNAMARA, Secretary
Department of Defense
Washington, D. C. 20301

JOHN W. MACY, Jr., Chairman
U. S. Civil Service Commission
Washington, D. C. 20415

L. J. ANDOLSEK, Vice Chairman
U. S. Civil Service Commission
Washington, D. C. 20415

and

ROBERT E. HAMPTON, Commissioner
U. S. Civil Service Commission
Washington, D. C. 20415
Defendants

COMPLAINT FOR A DECLARATORY JUDGMENT AND MANDATORY INJUNCTION ORDERING THE SECRETARY OF DEFENSE TO REINSTATE PLAINTIFF IN HIS POSITION AS TEACHER (ELEMENTARY) IN THE U. S. FLEET ACTIVITIES (NAVY DEPENDENT SCHOOLS - YOKOHAMA)

Plaintiff for his complaint against the defendants alleges as follows:

1. Jurisdiction of this Court over the subject matter is founded upon U. S. C. Title 28, Sections 1331, 1332, 2201, and 2202, and Title 11, Section 521 of the District of Columbia Code.

2. Plaintiff is a citizen of the United States and resides in the State of New Jersey, and from 1953 until March 9, 1965, was a Teacher (Elementary) with the Department of Defense overseas dependents school system. From June, 1963, until January, 1965, plaintiff was employed at the Nile C. Kinnick School, Navy #750, Box 8, Fleet Post Office, San Francisco, California, at Yokohama, Japan. Plaintiff brings this action in his own right. Defendant Robert S. McNamara is the Secretary of Defense and officially resides in the District of Columbia. Defendants John W. Macy, Jr., L. J. Andolsek, and Robert E. Hampton are the Commissioners of the United States Civil Service and officially reside in the District of Columbia.

3. On or about June 30, 1964, plaintiff was given a letter signed by C. C. Hartigan, Jr., from Commander, Fleet Activities, Yokosuka, ordering plaintiff to undergo a psychiatric

examination as a "preliminary" to an investigation of plaintiff's "intemperate allegations concerning administration of the Navy Dependents Schools in Japan." and advising plaintiff that "applicants must possess emotional and mental stability." (Emphasis supplied).

4. On July 2, 1964, plaintiff went as directed to the U. S. Naval Hospital at Yokosuka for the purpose of a psychiatric evaluation where he was interviewed by three physicians. Plaintiff was never permitted to learn the results of this examination, although his attorney in Japan was allowed to read a report based on it.

5. On July 10, 1964, a cablegram was sent from Commander, Fleet Activities, Yokosuka, to the Navy Bureau of Personnel in Washington, D. C., indicating that the investigation of plaintiff's allegations had been delayed pending completion of the psychiatric evaluation "suggested" by a cablegram from the Bureau of Personnel on June 26, 1964.

6. On August 31, 1964, plaintiff was relieved of all classroom duties and assigned the position of Audio Visual Coordinator of two elementary schools in the Yokohama area.

7. On September 22, 1964, Wilmer R. Haack, Chief of Section, Bureau of Retirement and Insurance, U. S. Civil Service Commission, wrote to plaintiff, "On the basis of your recent examination, it has been determined that you are totally disabled for useful and efficient service in your position and should be retired on an annuity." Plaintiff was notified that he had thirty days from receipt of the letter to appeal the decision. However, cables from Commander, Fleet Activities, Yokosuka to the Civil Service Commission, Seattle, Washington Region, of August 18, 1964, and to the Civil Service Commission Bureau of Retirement and Insurance of August 25, 1964, indicate that application for disability retirement had been made for plaintiff in Japan on July 24, 1964, sixty days before plaintiff was informed he was totally disabled, and thirty-five days before he was assigned to his new position.

8. On August 20, 1964, plaintiff underwent a routine annual physical examination at the U. S. Naval Hospital Dispensary in Yokohama and was found "qualified for employment", thirty-one days before he was informed that on the basis of his "recent examination, it [had] been determined that [he was] totally disabled . . ." and six days before the Civil Service Commission

"medically approved" his disability retirement on August 26, 1964.

9. On October 10, 1964, plaintiff appealed the decision through a letter from his attorney in Japan and requested a copy of the medical report on which the finding of disability was based.

10. On October 16, 1964, Mr. Wilmer R. Haack acknowledged plaintiff's letter but declined to mention the medical report. Alexander Tish, M. D., Chief, Disability Retirement Section, Medical Division, wrote plaintiff on October 23, 1964, that "medical records are privileged and confidential and are only for the use of our medical officers in evaluating a claim."

11. On November 24, 1964, Dr. Tish wrote plaintiff that a medical examination was necessary in connection with his application (emphasis supplied) for disability retirement, though that had been "medically approved" on August 26, 1964, ninety days before.

12. In response to the preceding letter plaintiff went to Tachikawa Air Force Base, Japan, where he spent four minutes with a psychiatrist on December 18, 1964.

13. On January 15, 1965, Commander, Fleet Activities, Yokosuka, ordered plaintiff to report for "additional [psychiatric]

evaluation" on January 20, 1965, because "Additional incidents involving intemperate conduct on [his] part are alleged to have occurred." Plaintiff reported as directed and spent forty-five minutes with a psychiatrist.

14. On January 27, 1965, E. T. Groark, Chairman, Civil Service Commission Board of Appeals and Review, wrote plaintiff's attorney in Japan the following paragraph: "After careful consideration of all the facts in the case, the Board has determined that the medical evidence of record supports a conclusion that [plaintiff] is totally disabled for useful and efficient service in the position of Teacher within the meaning of the Retirement Act. Accordingly, the action of the Bureau of Retirement and Insurance is affirmed." (Emphasis supplied). The attorney to whom the foregoing communication was addressed had read, but not copied, the first psychiatric evaluation report, which recommended only a transfer to a different job location and in no way suggested plaintiff was disabled.

15. The decisions of the Civil Service Commission were arbitrary, capricious, and vindictive in that they were not supported by the evidence, were contrary to the evidence, were procedurally defective, and effected punishment to plaintiff for his having exercised his right of free speech in offering constructive criticism of his employers.

16. Plaintiff was returned to the United States and classified as retired on March 9, 1965.

17. On March 15, 1965, E. T. Groark denied a request for a hearing for plaintiff from Congressman Joelson of New Jersey.

18. A reply letter from defendant John W. Macy, Jr., to Congressman Joelson on April 19, 1965, stated the original psychiatric examination had been on July 15, 1964, not July 2, and that plaintiff might be examined again to determine whether "he had recovered from the disabilities evidenced by his examination last July." Plaintiff was never given any information concerning the nature of those alleged disabilities. It further advised, "An examination at this time could not by its very nature be used to controvert the evidence (unspecified) on which the original and appellate decisions were made."

19. A letter almost identical to the foregoing was sent to Senator Harrison A. Williams, Jr., of New Jersey, from Andrew E. Ruddock, Director, Bureau of Retirement and Insurance, U. S. Civil Service Commission, on April 21, 1965.

20. On May 4, 1965, Dr. Tish notified plaintiff "a medical examination is necessary in connection with your status as an annuitant on the disability retirement rolls." This

examination was conducted on May 18, 1965, by Dr. Abraham Leff of the Veterans Administration Regional Office in Newark, New Jersey. Plaintiff has not been notified with respect to the results of this last examination.

WHEREFORE, the premises considered, plaintiff prays:

1. That an order be entered herein declaring the March 9, 1965, disability retirement from plaintiff's position to have been unwarranted and illegal.
2. That a mandatory injunction issue directing the Secretary of Defense to take or cause to be taken appropriate action to reinstate and restore plaintiff to the position held by him on August 30, 1964.
3. And for such other and further relief as to the Court shall seem just and proper.

/s/ Byron N. Scott
Byron N. Scott
Attorney for Plaintiff
1010 Vermont Avenue, N. W.
Washington, D. C. 20005
STERling 3-1025

Filed October 17, 1966

DEFENDANTS' MOTION TO DISMISS
AND FOR SUMMARY JUDGMENT

Come now defendants by their attorney, the United States Attorney for the District of Columbia, and move the Court (a) in part, to dismiss the action for lack of jurisdiction over the subject matter and (b) in part, to dismiss for failure to state a claim upon which relief may be granted, or for summary judgment, on the grounds that--

1. Congress has by statute made judicially nonreviewable the U. S. Civil Service Commission's determinations with respect to disability in a civil service employee's retirement case.
2. The Civil Service Commission's decision and proceedings in respect to plaintiff's retirement for disability are in full accord with law.

Incorporated herein and made a part hereof by attachment are the certified Civil Service Commission records (identified as Government Exhibit A). The medical records are not included therein.

In support hereof, defendants submit a memorandum of points and authorities. Defendants also submit a statement of material facts, in support of the motion for summary judgment.

/s/ David G. Bress
DAVID G. BRESS
United States Attorney

/s/ Joseph M. Hannon
JOSEPH M. HANNON
Assistant United States Attorney

/s/ Nathan Dodell
NATHAN DODELL
Assistant United States Attorney

Filed November 16, 1966

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS
AND FOR SUMMARY JUDGMENT

Comes now plaintiff by his attorney Byron N. Scott and moves for summary judgment on the ground that his involuntary disability retirement was effected illegally because of arbitrary and capricious action on the part of defendants.

Plaintiff opposes defendants' motion to dismiss and for summary judgment because the first of two grounds advanced by defendants is inapplicable to the case at hand, and the second and

final ground is not true. The so-called "fair summary" of material facts submitted by defendants is neither fair nor an accurate summary.

In support hereof plaintiff submits a memorandum of points and authorities and also a fair summary of material facts in support of his motion for summary judgment and in opposition to defendants' motion to dismiss and for summary judgment.

/s/ Byron N. Scott
Byron N. Scott
Attorney for Plaintiff
1010 Vermont Avenue, N. W.
Washington, D. C. 20005
Sterling 3-1025

Filed December 21, 1966

O R D E R

This matter having come before the Court on defendants' motion to dismiss and for summary judgment, and plaintiff's motion for summary judgment, and upon consideration of these motions, the memoranda of points and authorities in support thereof and in opposition thereto, and of the Civil Service

Commission records, Government Exhibits A and A-1, but not the confidential medical records, which were not included therein, and counsel having been heard, and it appearing to the Court that:

1. The decisions and proceedings in regard to plaintiff's retirement for medical disability are procedurally in full accord with law;
2. Congress has by statute, 5 U. S. C. 2266(c), made judicially nonreviewable determinations by the United States Civil Service Commission with respect to disability in a civil service employee's disability retirement case;
3. Plaintiff's contention that the Commission acted arbitrarily in reaching its independent determination of plaintiff's disability does not present any claim for which judicial relief can be afforded, 5 U.S.C. 2266(c), Smith v. Dulles, 99 U. S. App. D.C. 6, 7-8, 236 F. 2d 739, 740-741, cert. denied, 352 U.S. 955 (1956), particularly in light of plaintiff's failure to avail himself of the right to have a physician obtain a summary

of the medical records; to submit evidence to the Civil Service Commission in connection with his appeal; and to answer questions when he reported for a second psychiatric examination; it is by the Court, this 21 day of December, 1966,

ORDERED that the defendants' motion for summary judgment be and it hereby is granted, and this action is hereby dismissed; and it is

FURTHER ORDERED that plaintiff's motion for summary judgment be and it hereby is denied.

/s/
UNITED STATES DISTRICT JUDGE

Filed February 3, 1967

NOTICE OF APPEAL

Notice is hereby given this 3d day of February, 1967, that

Michael Uργο, Plaintiff,

hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 21st day of December, 1966

in favor of Defendants
against said Plaintiff.

/s/ Van A. Stilley
Attorney for

Plaintiff
1010 Vermont Avenue, N. W.
Washington, D. C. 20005
Sterling 3-1025

STANDARD FORM 2801-C U.S. Civil Service Commission FPM Supplement 831-1	TRANSMITTAL OF MEDICAL AND RELATED DOCUMENTS In Connection With Application for Disability Retirement CIVIL SERVICE RETIREMENT SYSTEM (Also Serves as a Request for Official Medical Examination When no Federal Medical Facilities are Available)	6 GAO 5000 2801-401
Regional Medical Officer U. S. Civil Service Commission Seattle Region 302 Federal Office Building Seattle 4, Washington The attached disability retirement documents are submitted for the applicant identified below. (EMPLOYING AGENCY: Check appropriate items.) ☒ Statement of employee's superior officer (Standard Form 2801-A) ☐ Statement of employee's attending physician (preferably on Standard Form 2801-B) ☒ Statement that employee refused to execute application on own behalf (Check this box and attach statement <u>only</u> if employing agency initiates application.) ☒ Agency report of medical examination (Check this box <u>only</u> if Federal medical examination report is available.)* *NOTE: If, because no Federal medical facilities are readily available, you do <u>not</u> check box 4 the appropriate U. S. Civil Service Commission regional office will arrange to have the applicant examined.		
1. Full Name of Applicant (Last, first, middle) URGO, Michael (N)	2. Date of Birth (Month, day, year) January 8, 1918	
3. Address (Number and street) (City and zone number) (State) 5 Spruce Street Passaic New Jersey		
4. Department or Agency In Which Presently Or Last Employed, Including Bureau or Division. U. S. Fleet Activities - Navy - BUSHIPS		

5. Location of Last Employment (City and State) Yokohama, Japan		
6. (A) Title and Grade of Last Position Teacher (Elementary)	6. (B) Date of Entry on Duty in Last Position. 8-16-57	7. Date Pay Stops Unknown
INSTRUCTIONS 1. Execute and sign in duplicate. 2. Address and forward original and attachments checked above to the medical officer of the U. S. Civil Service Commission regional office having jurisdiction over disability retirements for the applicant's place of employment. 3. Attach duplicate to application for retirement and forward to the Bureau of Retirement and Insurance, U. S. Civil Service Commission, Washington 25, D.C.		Available records indicate that the above-named applicant meets the length of service requirement for retirement on disability. /s/ C.C. Hartigan, Jr. <u>C. C. Hartigan, Jr.</u> (Signature) <u>Commander U.S. Fleet Activities</u> (Official Title) <u>U.S. Fleet Activities, Navy #3923</u> (Department or Agency) <u>7-24-64</u> (Date) Box 41 96647 80

24 July 1964

C-E-R-T-I-F-I-C-A-T-I-O-N

This is to certify that Mr. Michael URGO, Teacher (Elementary), refused to execute application on own behalf. Application for Disability Retirement is therefore initiated by the employing agency as provided for in Subchapter S10, FPM.

/s/ C. C. Hartigan, Jr.

C. C. HARTIGAN, Jr.
Captain, U.S. Navy
Commander Fleet Activities,
Yokosuka, Japan

Standard Form No. 2801-A Chapter R5 F.P.M.	SUPERIOR OFFICER'S STATEMENT IN CONNECTION WITH APPLICATION FOR TOTAL DISABILITY RETIREMENT CIVIL SERVICE RETIREMENT SYSTEM	6 GAO 5000 2801-201
This statement must be completed by the applicant's immediate superior officer and attached by the agency to his Application for Retirement (S.F. 2801) if the application is for retirement on account of total disability.		
TO: SUPERIOR OFFICER - To be eligible for disability retirement the applicant must become totally disabled for useful and efficient service in the grade or class of position last occupied by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on his part within the 5 years next prior to becoming so disabled. By answering the following questions as completely as you can you may help the Medical Officers of the Civil Service Commission considerably in determining whether the applicant is eligible and thereby avoid delay in processing his application.		
1. Name of Applicant for Disability Retirement (Last) (First) (Middle) URGO MICHAEL (N)		2. How long Have You Been the Applicant's Superior Officer? Approximately 11 months
3. Briefly Describe The Duties And Responsibilities Of The Applicant's Position And Also Important Environmental Factors Connected With The Job, Or Attach Official Copy Of Job Description, If More Convenient.		
As an elementary teacher, performs any or all of the following duties:		
A. Teaches one or more subject of the elementary school curriculum. Plans lessons and projects for class study and field trips. Prepares periodic reports and keeps records.		

- B. Participates in conferences and meetings.
C. Alternates with other teachers in supervising routine school activities in the homeroom, halls, playgrounds, bus, etc.
D. Performs other duties as assigned.

4. Which Of The Duties Described In Item 3 Was The Applicant Unable To Perform On Account Of His Disability?

Not Applicable

5. As Far As You Were Able To Observe, How Did The Applicant's Disability Interfere With Or Prevent His Performance Of The Duties Listed In Item 4?

Not Applicable

6. Approximately How Many Days Has The Applicant Been Absent Because Of Illness Within The Past 2 Years?

None

7. Describe Any Instances Of Emotional Instability Or Abnormal Behavior On The Part Of The Applicant.

See attached medical report

8. As Far As You Know, Has Excessive Use Of Alcohol Or Drugs Ever Interfered With Applicant's Performance Of His Duties? If So, Please Give Details.

Not Applicable

9. If The Applicant Was First Hired With A Physical Handicap, Please State Whether Or Not There Has Been Any Aggravation Of The Handicap Since He Entered On Duty. If The Answer Is "Yes", Please State When Such Aggravation Was First Noticed And To What Degree It Has Now Progressed.

Not Applicable

10. Please State Any Other Facts Concerning The Applicant's Disability Which You Feel May Be Helpful To The Medical Officers Of The Civil Service Commission In Determining Whether The Applicant Meets The Eligibility Requirements For Retirement On Account Of Total Disability.

None

11. What Efforts Have Been Made To Assign The Applicant To Any Other Job For Which He Is Qualified?

None

/s/ James A. Phillips

JAMES A. PHILLIPS	Principal	7-24-64
(Signature of Superior Officer)	(Title)	(Date)
	Nile C. Kinnick	
	Elementary School	

U. S. Fleet Activities (Navy Dependent Schools - Yokohama) Navy
No. 3923, FPO, San Francisco, California

NOTE: This completed statement must be attached by the employing agency to the Application for Retirement (S. F. 2801).

RCP:HLH:ab

August 26, 1964

CSA 859 918

CERTIFIED MAIL

Michael Urgo
5 Spruce Street
Passaic, New Jersey

Dear Mr. Urgo:

On the basis of your recent examination, it has been determined that you are totally disabled for useful and efficient service in your position and should be retired on an annuity. If you wish your annuity payments to begin promptly, please answer questions under Part A and F on the enclosed application, sign your name and return the application directly to this office.

If instead, you desire to appeal from the decision that you should be retired, you are privileged to do so within 30 days from receipt of this letter. Any appeal should be filed in accordance with the enclosed "Rules Governing Appeals" and should be accompanied by any evidence, medical preferred, that you care to submit.

Sincerely yours,

Wilmer R. Haack
Chief of Section

Enclosures 2

BRI 46-46
Standard Form 2801

RCP:HLH:ab

August 26, 1964

CSA 859 918

Commanding Officer
Department of the Navy
U. S. Naval Supply Depot
Navy No. 3923
FPO San Francisco, California

Dear Sir:

Your application to obtain the retirement on account of disability of Michael Urgo, Teacher (elementary), Yokohama, Japan, has been approved by the Bureau of Retirement and Insurance. In accordance with the regulations, he has been advised of his right of appeal.

No action should be taken to separate the employee for disability retirement until further advised by this office.

Sincerely yours,

Wilmer R. Haack
Chief of Section

RCP:HLH:ab

September 22, 1964

CSA 859 918

CERTIFIED MAIL

Michael Uργο
C/O Nile C. Kinneck Elementary School
Navy No. 570, Box 8
FPO, San Francisco, California

Dear Mr. Uργο:

On the basis of your recent examination, it has been determined that you are totally disabled for useful and efficient service in your position and should be retired on an annuity. If you wish your annuity payments to begin promptly, please answer questions under Part A and F on the enclosed application, sign your name and return the application directly to this office.

If instead, you desire to appeal from the decision that you should be retired, you are privileged to do so within 30 days from receipt of this letter. Any appeal should be filed in accordance with the enclosed "Rules Governing Appeals" and should be accompanied by any evidence, medical preferred, that you care to submit.

Sincerely yours,

Wilmer R. Haack
Chief of Section

Enclosures: 2

BRI 46-46
Standard Form 2801

UNITED STATES CIVIL SERVICE COMMISSION
BUREAU OF RETIREMENT AND INSURANCE
MEDICAL DIVISION

WASHINGTON, D. C. 20415

AUTHORIZATION TO REPORT

Mr. Michael Urgo
Nile C. Kinnick Elementary School
Navy #570, Box 8
FPO San Francisco, California

CSA No: 859 918
File: RM:AT:ms
Date: November 24, 1964

C-

☒ A medical examination is necessary in connection with your ^{the application for} retirement on disability under the provisions of the Civil Service Retirement Act. Filed by the Department.

☐ An annual medical examination is necessary in connection with your status as an annuitant on the disability retirement rolls. If the examination shows that you are still totally disabled your annuity will be continued without further notification.

Please follow the instructions checked in the appropriate box below. However, if you no longer reside in the city or town shown above or are temporarily away, do not write or report to the physician or hospital listed, but return this form to this office of the Commission and give your present address.

☐	YOU WILL BE NOTIFIED AT A LATER DATE TO REPORT IN PERSON TO:
If you do not receive notification within the next 2 weeks from the officer or physician named, you should communicate with him to arrange a definite date for the examination.	

☒	YOU WILL BE EXAMINED BY: A physician designated by the Commanding Officer U. S. Air Force Hospital, 6100 Support Wing Tachikawa, Japan APO 323 San Francisco, California You should communicate with him in advance and request that a definite date be arranged for the examination.
--	---

After the examining physician has signed and dated the form below, he should hand this paper back to you, and you should return it to the United States Civil Service Commission at the above address.

/s/ Alexander Tish M.D.

Alexander Tish, M. D.
Chief, Disability Retirement
Section
(Signature of Authorized
Medical Officer)
Medical Division

The person named above was examined by me this _____ day of _____, 196__ and his signature appearing below was witnessed by me.

(Signature of Examining
Physician)

(Signature of Applicant)

(Address of Examining
Physician)

Associates

Jiro Shibata
Takeshi Murata
(Att'ys-at-law)

HAROLD OPPENHEIM
Attorney-at-Law
53 Yamashita-Cho
Yokohama, Japan

Telephones:
68-3437; 68-3471

Cable Address
Oppenlaw Yokohama

16 December 1964

Mr. Wilmer R. Haack,
Chief of Section,
U. S. Civil Service Commission,
Bureau of Retirement Insurance,
Washington, D. C. 20415

Dear Mr. Haack,

Re: RCP HLH:ae: CSA 859 918

Under date of 27 October 1964 I wrote you a lengthy letter concerning Mr. Michael Urgo, Nile C. Kinnick Elementary School, Navy #570. Thereafter, on 17 November, I again wrote you pointing out that I was concerned with the fact that I had not received a response to my previous letter and that I was anxious to know whether or not Mr. Urgo's appeal rights were being protected. Up to the present time I have not received the courtesy of a direct reply to either of my letters.

Under date of 20 November 1964 I received a letter from Alexander Tish, M. D., Chief, Disability Retirement Section, Medical Division. In that letter Dr. Tish writes, "However, Mr. Urgo's appeal is now receiving further consideration. **** If there is no change in the decision of our medical officers they will forward the appeal to our Board of Appeals and Review for final decision. You as well as Mr. Urgo will be notified of such decision."

To say that I am greatly disturbed by the aforementioned quotations from Dr. Tish's letter is a great understatement. According to Dr. Tish - who appears to be speaking as your representative in the matter - Mr. Urgo's appeal is under consideration without our being given an opportunity to submit

Mr. Wilmer R. Haack

one word in Mr. Urgo's behalf! And this notwithstanding the fact that in my letter of 27 October I made it crystal-clear that it was my desire to file an appeal brief in his behalf!

I respectfully submit that for your Bureau, or any other division of the Civil Service Commission, to force a medical retirement upon an individual without giving him a full and fair opportunity to defend himself against nebulous charges is most unfair; and such proceedings would be the type of un-American action which well might lead to a Congressional investigation. I trust that you will not consider this language either intemperate or threatening. If it is "strong" language, it is prompted by my firm belief that our American system guarantees every man an opportunity to be confronted with evidence against him and, further, to be permitted a reasonable opportunity to defend himself against allegations made.

Personally, I feel quite bitter about the manner in which Mr. Urgo's case is being handled because of two things in particular: (1) I read the medical report on which the Commission is seeking to place on Mr. Urgo the stigma that he is "totally disabled" from "useful and efficient service in (his) position". I retain a reasonably clear recollection of the contents of that medical report and I unhesitatingly state that, in my humble opinion, the conclusions of that medical report were NOT as quoted above; and (2) I have in my possession letters from principals of schools here in Yokohama which state that, in the opinion of the authors, Mr. Urgo is capable of filling the position from which he was removed.

The above are but two reasons why we demand (so far as is possible) that we be given a full and fair opportunity to present a brief which may be presented to an unbiased individual or Committee. And in view of what I wrote above (about having seen the report and the conclusions I drew from it), I respectfully submit that to now prevent me from re-reading it for the purpose of obtaining exact quotations for an appeal brief, taints of apprehension on the part of you and others.

Mr. Urgo informs me that he has been directed to present himself at the psychiatric ward of the U. S. Air Force Hospital at Tachikawa on Friday, the 18th. I have advised him to appear

Mr. Wilmer R. Haack

there only because he has been directed to do so. However, I have directed him not to answer any questions asked. I have taken this position because of the manner in which conclusions have been drawn by you and Dr. Tish from the previous report and, therefore, I cannot help but believe that, as in the previous case, erroneous interpretations may well be made of whatever the Air Force doctor(s) may report.

"Sharp" though you may consider this letter - and notwithstanding the fact that you may be inclined not to answer it as a means of showing your displeasure with me, personally - I respectfully request that you, as Chief of the Bureau of Retirement and Insurance (rather than one of your subordinates) let me know (1) whether or not I, or someone else in Mr. Urgo's behalf, is going to be permitted to file a brief in his behalf before a decision is made; and (2) whether or not I shall be permitted to re-read the medical report from which you concluded that Mr. Urgo is "totally disabled" from "useful and efficient service in (Mr. Urgo's) position."

Your prompt attention to this matter will be greatly appreciated.

Sincerely yours,

/s/ Harold Oppenheim

RCP:WRH:ab

December 28, 1964

CSA 859 918

Harold Oppenheim
Attorney at Law
53 Yamashita-Cho
Yokohama, Japan

Dear Mr. Oppenheim:

I have your letter of December 16, 1964 concerning the appeal rights of Mr. Michael Uργο.

Since Mr. Uργο stated in his letter of October 10, 1964 that he desired to appeal from the decision that he should be retired on disability the case is receiving further consideration by our medical officers. As you were informed by Dr. Tish, our regulations do not permit us to comply with your request for a copy of the medical report.

The Commission's refusal to disclose (under its regulations) disability evidence in cases like this is upheld by the Federal courts. See *Sawyer V Stevens*, 221 F 2d 822, certiorari denied 348 U.S. 959; *Murphy v Wilson*, 236 F 2d 737, certiorari denied 352 U. S. 954; *Ellmore v Brucker* 236 F 2d 734, certiorari denied 352 U. S. 955; *Gaines v. United States*, U. S. Court of Claims No. 147-60, decided July 18, 1962; and *Reed v Mitchell*, U. S. District Court for District of Columbia, decided June 8, 1944.

There has been no attempt to deny you the right to submit a brief or any other evidence in support of Mr. Uργο's appeal. Any further evidence you wish considered should be submitted promptly.

Sincerely yours,

Wilmer R. Haack
Chief of Section

UNITED STATES AIR FORCE HOSPITAL TACHIKAWA
APO 323, San Francisco, California

Reply To
Attn of: HNPS

Received Jan. 11, 1965

Subject: Medical Statement

To: Psychiatric Social Survey
Central Office, Medical Division
United States Civil Service Commission
Washington 25, D. C.

1. At the request of your office, an appointment for psychiatric examination was made on 18 December 1964 at 10:00 a.m. for Mr. Michael Urgo.

2. Mr. Urgo arrived for his appointment on time but declared the following at the outset:

I am appearing before you only because the U. S. Civil Service Office directed me to be present here. I did not come of my own volition.

I, Mr. Michael Urgo, hereby solemnly declare that upon the advice of my attorney, Mr. Harold Oppenheim, of Yokohama, I decline to answer any questions whatsoever or to make any comments concerning my case. I say this explicitly and unequivocally.

3. A psychiatric examination was not, therefore, performed.

/s/ Paul Singer

PAUL SINGER
Captain, USAF, MC
Chief, Psychiatric Service

REVIEWED AND APPROVED:

/s/ John R. Troxell
JOHN R. TROXELL
Colonel, USAF, MC
Deputy Commander

MEMORANDUM

RCP:PMc
CSA-859 918
January 22, 1965

TO: CHAIRMAN, BOARD OF APPEALS AND REVIEW

FROM: CHIEF, CLAIMS DIVISION
BUREAU OF RETIREMENT AND INSURANCE

SUBJECT: DISABILITY RETIREMENT APPEAL

EMPLOYEE Michael Uργο	APPELLANT ☒ EMPLOYEE ☐ AGENCY	CSA- 859 918
POSITION Teacher (Elementary)	AGENCY Department of the Navy	

This is an appeal from an action of the Bureau of Retirement and Insurance as described below

- ☐ Appellant's claim for disability annuity was disallowed because this Bureau held that the evidence presented did not show total disability for useful and efficient service, within the meaning of the Civil Service Retirement Act.
- ☒ Appellant is scheduled for retirement on disability annuity at his agency's request because this Bureau held that the evidence presented showed him to be totally disabled for useful service in his grade or class of position.
- ☐ Appellant's disability annuity is scheduled for discontinuance because this Bureau held that total disability for useful and efficient service was no longer shown.

II

* * * * *

Medical Division, Bureau of Retirement and Insurance, reviewed the case in the light of the content of appellant's protest but concluded that reversal of its original recommendation was not warranted. The entire file containing the findings, the conclusions, and reasons for this Bureau's action in the case is accordingly submitted to your Board for consideration and determination.

51

BRI 46-189
April 1964



BAR:ELK:dc

CSA-859 918
Jan 27 1965

AIR MAIL

Mr. Harold Oppenheim
Attorney at Law
53 Yamashita - Cho
Yokohama, Japan

RETURNED

Dear Mr. Oppenheim:

This refers to the appeal of Mr. Michael Uργο from the action of the Commission's Bureau of Retirement and Insurance in allowing the agency's application for Mr. Uργο's disability retirement from the position of Teacher (Elementary), U.S. Fleet Activities, BUSHIPS, Yokohama, Japan.

After careful consideration of all the facts in the case, the Board has determined that the medical evidence of record supports a conclusion that Mr. Uργο is totally disabled for useful and efficient service in the position of Teacher within the meaning of the Retirement Act. Accordingly, the action of the Bureau of Retirement and Insurance is affirmed.

For the Commissioners:

Office Services Division
Mail & Comm, Unit

Jan 27 1965

MAILED BY _____ H

Sincerely yours,

E. T. Groark
Chairman, Board of Appeals
and Review

cc: Dr. Tish - Medical
cc: Mr. Cody - BRI
✓ cc: Mr. Michael Uργο (AIRMAIL)
Nile C. Kinnick Elementary School
Navy #570, Box 8
FPO San Francisco, California
✓ cc: Commanding Officer (AIRMAIL)
U. S. Naval Supply Depot
Navy No. 3923
FPO San Francisco, California
ELKeith:dc typed 1-26-65

BRIEF FOR APPELLANT

IN THE
UNITED STATES COURT OF APPEALS
For the District of Columbia Circuit

No. 20,832

MICHAEL URGO, Appellant

v.

ROBERT S. McNAMARA, et al, Appellees

Appeal from an Order of the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 19 1967

Nathan J. Paulson
CLERK

Byron N. Scott
Attorney for Appellant
1010 Vermont Avenue, N. W.
Washington, D. C. 20005

STATEMENT OF QUESTIONS PRESENTED

1. Did the lower court err in holding that plaintiff's involuntary disability retirement was not procedurally defective and illegal?

2. May a civil servant be involuntarily retired as totally disabled without a hearing as punishment for having exercised his right to criticize his employer?

3. Are arbitrary and capricious acts of federal employers judicially reviewable?

BRIEF FOR APPELLANT

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for the District of Columbia

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JURISDICTIONAL STATEMENT

The complaint alleged that the trial court had jurisdiction under U. S. C. Title 28, Sections 1331, 1332, 2201, and 2202, and Title 11, Section 521, of the District of Columbia Code. The jurisdiction of this court is found in 28 U. S. C. 1291 and 1294. The complaint herein was filed in the United States District Court for the District of Columbia on June 15, 1966, charging that plaintiff's (hereinafter appellant) involuntary disability retirement was unwarranted and illegal and that the Civil Service Commission's sustaining decisions were arbitrary, capricious, and vindictive in that they were not supported by the evidence, were contrary to the evidence, were procedurally defective, and effected punishment to appellant for having exercised his right to free speech in offering constructive criticism of his employers. Defendants (hereinafter appellees) moved to dismiss and for summary judgment, with exhibits attached, on October 17, 1966, and on November 16, 1966, appellant moved for summary judgment. On December 8, 1966, U. S. District Judge Leonard P. Walsh heard counsel on the two motions, and on December 21, 1966, entered an order granting appellees' motion for summary judgment, dismissing the cause, and denying appellant's motion for summary judgment. Appeal was noted on February 3, 1967, and the case was docketed in this court on March 10, 1967.

STATEMENT OF THE CASE

Appellant, a Civil Service teacher, with many years' experience, and with the Department of Defense (hereinafter Department) overseas dependents school system in Japan, made written criticism to the Navy about its school policies. The Department then asked the Civil Service Commission (hereinafter CSC) to retire him for "disability", which the Commission did by the actions next recited herein.

A June 30, 1964, letter from the Commander, Fleet Activities, Yokosuka (hereinafter the Commander) directed appellant to report to the U. S. Naval Hospital for "psychiatric evaluation" as a "preliminary" to an investigation of his "intemperate allegations concerning administration of the Navy Dependents Schools in Japan" and advised him that applicants must possess emotional and mental stability (emphasis supplied). This letter carried out a June 26, 1964, suggestion from the Navy Bureau of Personnel that the investigation be delayed pending completion of a psychiatric evaluation.

Appellant's then attorney in Japan was allowed to read a report issued on the basis of appellant's interview with three examining psychiatrists which had been held on July 15, 1964, but since then neither he nor appellant has been able to obtain a copy of it. (JA 27-29).

On July 24, 1964, appellant refused a request by the Commander to apply for disability retirement, whereupon, without informing him, the Commander submitted an application for it. (JA 18).

On August 20, 1964, appellant underwent the routine annual physical examination at the U. S. Naval Hospital Dispensary in Yokohama at which time he was found "qualified for employment." On August 26, 1964, the CSC cabled the Commander that the application for involuntary disability retirement had been "medically approved."

On August 31, 1964, thirty-five days after the filing of the application for disability retirement, and five days after it had been medically approved by CSC, but eleven days after he had been found "qualified for employment", appellant was relieved of all classroom duties and assigned instead to the position of Audio Visual Coordinator of two elementary schools in the Yokohama area.

On September 22, 1964, Wilmer R. Haack, Chief of Section, Bureau of Retirement and Insurance, CSC, wrote to appellant, "On the basis of your recent examination [without identifying it], it has been determined that you are totally disabled for useful and efficient service in your position and should be retired on an annuity." (JA 24).

By an October 10, 1964, letter, appellant advised the CSC that he wished to appeal its decision and requested that he or his attorney be furnished a copy of the medical report upon which the disability retirement had been based. His letter was treated as an appeal and his request for the report was denied for the stated reason that the medical records were privileged and confidential. A November 24, 1964, letter to appellant from Alexander Tish, M. D., of the CSC Bureau of Retirement and Insurance notified him that "A medical examination is necessary in connection with the application for your retirement on disability under the provisions of the Civil Service Retirement Act filed by the Department." (JA 25).

On December 18, 1964, appellant, as requested by Dr. Tish, kept an appointment for a psychiatric examination which had been made for him by the Commanding Officer, U. S. Air Force Hospital, 6100 Support Wing, Tachikawa, Japan, for the "necessary" examination, but on the advice of counsel refused to answer any questions put to him by the Air Force psychiatrists. (JA 27-29).

Appellant submitted no other "evidence" in support of his "appeal". However, when the Commander ordered appellant to report for "additional [psychiatric] evaluation" on January 20, 1965, because "Additional incidents involving intemperate conduct on [his] part are alleged to have occurred", appellant went as directed and spent forty-five minutes in cooperative communi-

cation with a psychiatrist. He has never been informed of the results of that encounter.

The Chairman of the Board of Appeals and Review of the CSC, on January 22, 1965, was advised by the Bureau of Retirement and Insurance that its Medical Division had reviewed the case in the light of the content of appellant's protest, but had decided the legal issue by concluding the reversal was not warranted (emphasis supplied). On January 27, 1965, the Board of Appeals and Review affirmed the action of the CSC Bureau. (JA 34).

Appellant was returned to the United States and classified as retired on March 9, 1965. He filed his complaint in the United States District Court for the District of Columbia on June 15, 1966. (JA 3-10). On December 21, 1966, that court denied appellant's motion and granted appellees' motion for summary judgment and to dismiss the complaint without opinion or memorandum. (JA 13-15). It is from this judgment that this appeal was taken.

STATEMENT OF POINTS

Appellant's involuntary disability retirement from his position as teacher (Elementary) with the Department of Defense overseas dependents school system was wrongful and illegal because:

1. The physical and psychiatric examination in Japan on which the finding of disability was based was initiated in

Washington in response to appellant's criticism of the school system administration, and revealed no disability, psychiatric or otherwise.

2. The finding of total disability was contrary to the evidence, arbitrary, capricious, and vindictive since it simply applied punishment to appellant for having exercised his rights of free speech in offering constructive criticism of his employers.

3. The decision sustaining the finding was contrary to the evidence, arbitrary, and capricious.

4. The involuntary disability retirement was procedurally defective.

SUMMARY OF ARGUMENT

I. The original and appellate decisions and proceedings in regard to appellant's involuntary retirement for medical disability are procedurally defective and illegal.

II. Appellant's rights to due process of the law under the Fifth and Fourteenth Amendments were violated.

III. Congress has not made judicially nonreviewable any case in which U. S. Civil Service Commission determinations are shown to be so arbitrary, capricious, and vindictive as to amount to bad faith.

ARGUMENT

I

Appellant's involuntary disability retirement was medically approved on August 26, 1964, without any medical evidence to substantiate it, although there was medical evidence to refute it. The lack of substantiation was admitted by the CSC Bureau of Retirement and Insurance when on November 24, 1964, it notified appellant that "a medical examination is necessary in connection with the application for [his] retirement on disability under the provisions of the Civil Service Retirement Act filed by the Department." (JA 25-26). The evidence to refute it was in the report of his examination held on August 20, 1964, wherein he was found "qualified for employment."

All the evidence against appellant was concealed from him except the chronological sequence of events, which could not be concealed. The chronological sequence of events alone compels the conclusion that decisions were made after which justification for them was sought. Therefore, "careful consideration of all the facts in the case", could not have been given as was claimed by E. T. Groark, Chairman, Board of Appeals and Review. (JA 34). Appellant was entitled as of right at least to this much, if the retirement were in fact to be "procedurally in full accord with law" and good faith. (JA 14).

The U. S. District Court erred in refusing to hold that appellant's involuntary disability retirement was procedurally defective, arbitrary, capricious, and illegal.

II

The only way a federal agency may, without a hearing, rid itself of a long standing, highly regarded, veteran career employee who is too young to retire and who will not be coerced, is through the morally outrageous device, frequently used today, of involuntary retirement for psychiatric disability. To effect this a psychiatric consultation is arranged for him, and immediately and forever after, regardless of what was said by the employee or reported by the examining physician, all matter concerning the reasons for the termination and the considerations that went into the decision to bring it about or sustain it are concealed from him behind the cloak of medical privilege. That is what happened in this case. This is a violation of the spirit and letter of the Fifth and Fourteenth Amendments to the Constitution.

At the very least, "due process", Civil Service Regulations, and the most fundamental American concepts of fair play require that the employee be given an opportunity to know and meet the true specifications on which the efforts to remove him are based.

Conceivably there may be medical reasons to withhold certain medical information from certain patients, but when a federal government agency uses that excuse to conceal its own bad faith it has done a disservice to all citizens. Presumably concealing medical information is supposed to benefit the subject of it. Fortunately, the ordeal this appellant has been forced to endure while being so helped did not itself cause mental illness.

Appellees' advocates continuing this system whereby a man's life may be ruined at the whim of a superior without his ever being heard on the true issues. If psychiatric disability were a crime appellant would be in a much better position, for then "due process" would assure his right to confrontation with the accuser and the opportunity with counsel aided by generous discovery devices to meet the specific charges against him. Since psychiatric disability is not a crime, anyone in the federal government may be accused of it and then pilloried with impunity: refusal to be examined is deemed insubordination. The system advocated by appellees will not permit the victim to be heard.

III

Appellees' position supporting the procedural regularity and non-reviewability of the Civil Service Commission's findings do not touch on the fundamental issue here of the arbitrariness

and capriciousness of appellees' acts in effecting and then sustaining appellant's punishment. The so-called nonreviewability of Civil Service Commission findings does not license that body or any federal employer to punish with impunity. Arbitrary and capricious acts by federal employers and the Civil Service Commission are and must be reviewable by federal courts. See Wieman v. Updegraff, 344 U.S. 183, Vitarelli v. Seaton, 102 U.S. App.D.C. 316, 253 F.2d 338; McGinty v. Brownell, 101 U.S.App. D.C. 368, 249 F.2d 124; and Bailey v. Richardson, 86 U.S.App. D.C. 248, 182 F.2d 46, aff'd 341 U.S. 918.

IV

Conclusion

Appellant's involuntary disability retirement was procedurally defective and, therefore, illegal because it was not substantiated but was refuted by the evidence; concealing the evidence from him under the circumstances of this case amounts to a violation of his Constitutional rights to due process of law; and arbitrary and capricious acts by federal employers and the Civil Service Commission are and must be reviewable by federal courts. The judgment of the lower court should be reversed and summary judgment entered for appellant.

Respectfully submitted,

Byron N. Scott
Attorney for Appellant

BRIEF AND APPENDIX FOR APPELLEES

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,832

MICHAEL URGO, APPELLANT

v.

ROBERT S. McNAMARA, ET AL., APPELLEES

Appeal from the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED MAY 26 1967

DAVID G. BRESS,
United States Attorney.

Nathan J. Paulson
CLERK

FRANK Q. NEBEKER,
NATHAN DODELL,
Assistant United States Attorneys.

C.A. No. 1572-66

QUESTIONS PRESENTED

Appellant, a civil service employee, was involuntarily retired by the Civil Service Commission as totally disabled for useful and efficient service in his position after proceedings in full conformity with the governing regulations.

In view of the foregoing, the questions presented, in the opinion of appellees, are as follows:

1. Are the procedures prescribed by the Commission regulations in accord with law? Specifically, where a complete summary of the confidentially-treated psychiatric report would have been made available, on request, to appellant's physician, and any psychiatric or other evidence proffered on appellant's behalf would have been given due consideration, did the Commission act within its lawful discretion when it refused to make this psychiatric report available to appellant and his counsel on their demand therefor?

2. In the light of 5 U.S.C. § 2266(c) and the decided cases, can appellant obtain judicial review of the Commission's finding that he was disabled, particularly when: (1) he makes no substantially supported allegation that the Commission did not act in good faith and in exercise of its independent judgment; (2) he did not avail himself of the right to have a physician obtain a complete summary of the medical evidence; (3) he did not submit any evidence to the Commission in connection with his appeal; and (4) he refused to answer questions when he reported for a second psychiatric examination?

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*Cases chiefly relied upon are marked by asterisks.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,832

MICHAEL URGO, APPELLANT

v.

ROBERT S. MCNAMARA, ET AL., APPELLEES

**Appeal from the United States District Court
for the District of Columbia**

BRIEF AND APPENDIX FOR APPELLEES

COUNTERSTATEMENT OF THE CASE ¹

Appellant, a former civil service employee retired involuntarily for total disability, filed an action in the district court seeking a declaratory judgment that his retirement had been unlawful and an injunction restoring him to his employment. After the filing of cross-motions for summary judgment, the Honorable Leonard P. Walsh entered summary judgment for the government.

The pertinent facts may be summarized as follows:

¹ "J.A." refers to the joint appendix; and "G.App." to the appendix to our brief.

Appellant was a teacher at an elementary school for Naval dependents in Yokohama, Japan. On July 15, 1964, three psychiatrists at the U.S. Naval Hospital examined him and prepared a written report of their findings (G. App. A 2). Appellant was given an opportunity to request disability retirement, on July 24, 1964. He declined, and the Commander, Fleet Activities, Yokosuka, submitted an application for appellant's disability retirement, together with the psychiatric report, to the Regional Medical Officer of the Civil Service Commission in Seattle, Washington (J.A. 17-21).²

By letter dated September 22, 1964, the Commission's Bureau of Retirement and Insurance in Washington, D.C. informed appellant: "On the basis of your recent examination, it has been determined that you are totally disabled for useful and efficient service in your position and should be retired on an annuity." The letter also advised appellant of his right to appeal; enclosed the applicable rules governing appeals; and informed appellant that he should submit such evidence, medical preferred, as he desired (J.A. 24).³ The Bureau of Retirement and Insurance also advised appellant's employing agency that its application had been approved, that appellant had been notified of his right to appeal, and that "no action should be taken to separate the employee for disability retirement until further advised by this office" (J.A. 23).

Appellant announced his intention to appeal in a letter to the Commission dated October 10, 1964. In the same letter he requested permission for him or his attorney to obtain a copy of the psychiatric report (G. App. A 8).

² Also part of the material before the Commission were two letters appellant wrote to Mrs. Winnifred K. Primm, a teacher at another dependent's school in Japan. These letters appear in the original administrative record filed in the District Court (Government Exhibit A, enclosure 6).

³ An earlier letter with identical contents had been sent by mistake to appellant's address in the United States instead of his address in Japan (J.A. 22). The mistake is explained in a telegram dated September 23, 1964 (G. App. A 7).

The Commission sent two letters in reply. The first, dated October 16, advised appellant that his case had been forwarded to the Medical Division of the Bureau of Retirement and Insurance for consideration, and that, should the Medical Division's decision be unfavorable, it would be further forwarded to the Board of Appeals and Review (G. App. A 10). The second letter, dated October 23, was from the Chief of the Disability Retirement Section of the Medical Division and advised appellant that the "Code of Federal Regulations, Title 5, Part 29.12" did not permit disclosure of a copy of the report of psychiatric examination; but that, "if a request is received from a physician who desires medical information from our file for his own confidential and professional use, a summary of our medical records will be furnished him" (G. App. A 11).⁴

The next letter went to the Commission from appellant's counsel, a Mr. Harold Oppenheim of Yokohama, and requested a copy of the psychiatric report to use on appeal (G. App. A 3). The Chief of the Disability Retirement Section, Medical Division, answered in a letter dated November 20, by advising Mr. Oppenheim of the reply made in the Commission's letter of October 23 to appellant. Mr. Oppenheim was also advised that a second examination was being scheduled for appellant (G. App. A 3). Mr. Oppenheim replied in a lengthy letter on December 16, requesting again a copy of the psychiatric report and informing the Commission that appellant would answer no questions at a second psychiatric examination (J.A. 27-

⁴ In passing, we would make two observations not made by appellant about the letter of October 23. First, at the time the letter was written, 5 C.F.R. § 29.12 had been superceded by 5 C.F.R. 831.106(a)(4). The two regulations are identical in all material respects and appellant has never contended that this technical error affected him. Second, the letter was addressed to appellant's residence in New Jersey. However, appellant has never suggested that he did not receive the letter; indeed, he has never mentioned at any time that the address was erroneous. As the telegram of September 23, 1964 shows (G. App. A 7), a "James Urgo" was authorized to receive and to sign for appellant's certified mail at the New Jersey address.

29). In this letter, Mr. Oppenheim wrote as follows (J.A. 28):

..... (1) I read the medical report on which the Commission is seeking to place on Mr. Urgo the stigma that he is "totally disabled" from "useful and efficient service in (his) position". I retain a reasonably clear recollection of the contents of that medical report and I unhesitatingly state that, in my humble opinion, the conclusions of that medical report were NOT as quoted above; and (2) I have in my possession letters from principals of schools here in Yokohama which state that, in the opinion of the authors, Mr. Urgo is capable of filling the position from which he was removed.

* * * *

The Commission answered Mr. Oppenheim by citing five cases upholding the refusal under the regulations to comply with his request for a copy of the report and by advising that, "Any further evidence you wish considered should be submitted promptly" (J.A. 30). Appellant appeared on December 18 for the second psychiatric examination and on advice of counsel, refused to answer any questions (J.A. 31). This examination was scheduled at the U. S. Air Force Hospital (J.A. 25-26); the earlier examination had been at the Naval Hospital.

No evidence on appellant's behalf was submitted to the Commission (G. App. A 4). No request was ever made by a physician of appellant's choice for a complete summary of the medical evidence.

The case went forward to its disposition. On January 22, 1965, the Medical Division of the Bureau of Retirement and Insurance held that the evidence showed appellant was totally disabled for useful service in his position and referred the case to the Board of Appeals and Review (J.A. 32-33). On January 27, the Board affirmed the finding that appellant was totally disabled for useful and efficient service in the position of teacher (J.A. 34).⁵

⁵ On January 21, 1965, the Civil Service Commission received a telegram from naval authorities in Japan. The telegram requested

STATUTES AND REGULATIONS INVOLVED

United States Code, Title 5, Section 2257(a) provides, in pertinent part:

Any employee who completes five years of civilian service and who is found by the Commission to have become disabled, shall upon his application or upon application by his department or agency, be retired on annuity computed as provided in section 2259 of this title. . . .⁶

United States Code, Title 5, Section 2266(c) provides:

Questions of dependency and disability arising under this chapter shall be determined by the Commission and its decisions with respect to such matters shall be final and conclusive and shall not be subject to review. The Commission may order or direct at any time such medical or other examination as it shall deem necessary to determine the facts relative to the disability or dependency of any person receiving or applying for annuity under this chapter, and may suspend or deny any such annuity for failure to submit to any such examination.⁷

"priority consideration" of the appeal because retaining appellant in his teaching position had become a "critical problem requiring immediate solution." The telegram stated (G. App. A 12-A 13):

1. Subject teacher again involved in incidents of irrational behavior which adversely affect moral and discipline in the school. Incident included threat of violence to faculty member. Urgo was ordered to report to hospital for further psychiatric evaluation.
2. Chief Neuro-psychiatric Department, U.S. Naval Hospital Yokosuka who conducted the re-evaluation states that there has been an evident deterioration in subjects mental condition which could terminate in acts of physical violence. He recommends medical air evacuation.

* * * *

⁶ These provisions have been incorporated in 5 U.S.C. 8337(a), as enacted September 6, 1966, P.L. 89-554.

⁷ These provisions have been incorporated in 5 U.S.C. 8347(c), as enacted September 6, 1966, P.L. 89-554.

Code of Federal Regulations, Title 5, Section 831.106
(a) (1) (2) (4), provides:

(1) Except as provided in this section, the Commission shall not disclose information from the files, records, reports, and other papers and documents pertaining to a claim filed with the Commission, whether potential, pending, or adjudicated. This information is deemed privileged and confidential.

(2) Except as provided in subparagraphs (3) and (4) of this paragraph, the Commission will disclose information from the files, records, reports, and other papers and documents to an employee or Member or his authorized representative in matters concerning the employee or Member. The term "authorized representative" means a person who has satisfied the Commission of his authority to act.

* * * *

(4) When an individual's case involves a disability that is:

- (i) a mental condition; or
- (ii) Another condition of such a nature that a prudent physician would hesitate to inform an individual suffering from the condition of its exact nature and probable outcome,

the Commission will make available a complete summary of the medical evidence in the case, including a copy of the resume of the reported behavior irregularities or manifestations of unsatisfactory service which is ordinarily furnished as background factual evidence to Government mental facilities, psychiatrists, or other physicians who conduct the official retirement medical examination, for review only by a licensed physician designated in writing for that purpose by the individual.

SUMMARY OF ARGUMENT

The law is settled that there is no right to a quasi-judicial hearing in involuntary disability retirement cases. Appellant was not entitled to receive a copy of the

psychiatric report. The Civil Service Commission's finding of total disability is not subject to judicial review, particularly on the facts of this case.

ARGUMENT

I. The Civil Service Commission's decisions and proceedings in regard to appellant's retirement for medical disability were procedurally in full accord with law.

The Civil Service Commission retired appellant involuntarily after determining that he was totally disabled for psychiatric reasons from continuing in his employment as an elementary school teacher. The determination was affirmed on administrative appeal first to the Medical Division of the Commission's Bureau of Retirement and Insurance and secondly to the Commission's Board of Appeals and Review. Under the applicable procedure, appellant could not obtain a copy of the psychiatric report, but he could have chosen a doctor to receive a complete summary of the medical evidence. Appellant was afforded the opportunity to submit such evidence as he desired to the Commission.

The law is clear that there is no right to a quasi-judicial hearing in disability retirement cases. *Ellmore v. Brucker*, 99 U.S. App. D.C. 1, 3, 236 F.2d 734, 736, cert. denied, 352 U.S. 955 (1956); *Murphy v. Wilson*, 99 U.S. App. D.C. 4, 5, 236 F.2d 737, 738, cert. denied, 352 U.S. 954 (1956); *Smith v. Dulles*, 99 U.S. App. D.C. 6, 7, 236 F.2d 739, 740, cert. denied, 352 U.S. 955 (1956); *Chafin v. Pratt*, 358 F.2d 349, 355-358 (5th Cir.), cert. denied, 385 U.S. 878 (1966); *Cerrano v. Fleishman*, 339 F.2d 929, 931 (2d Cir. 1964), cert. denied, 382 U.S. 855 (1965); *Rosenblum v. United States Civil Service Comm'n*, 224 F. Supp. 281, 282 (W.D. Pa. 1963); cf. *Cafeteria Workers v. McElroy*, 367 U.S. 886, 896 (1961), referring to the "settled principle that government employment, in the absence of legislation, can be revoked at the will of the appointing officer."

The Commission's regulations precluded appellant or his attorney from obtaining a copy of the psychiatric report, 5 C.F.R. § 831.106(a)(4), and the validity of that particular regulation has been litigated and sustained. See *Ellmore v. Brucker*, *supra* at 3, and *Murphy v. Wilson*, *supra* at 5, upholding the validity of the predecessor regulation, which is essentially similar to § 831.106(a)(4), insofar as material.

In short, appellant has in no way questioned the full conformity of the Civil Service Commission procedure in this case with applicable regulations, and the validity of the procedure prescribed in the regulations has been upheld by this Court. *Ellmore v. Brucker*, *supra*; *Murphy v. Wilson*, *supra*; *Smith v. Dulles*, *supra*.

II. The Civil Service Commission determination that appellant was disabled is not judicially reviewable.

Congress has expressly chosen to make determinations of the Civil Service Commission with respect to a civil service employee's disability in a retirement case judicially nonreviewable. Section 2266(c) of Title 5, U. S. Code, provides:

Questions of dependency and disability arising under this Act shall be determined by the Commission and its decisions with respect to such matters shall be final and conclusive and shall not be subject to review.

Accordingly, appellant's claim as to the merits of the Commission's decisions—e.g., that they were arbitrary or vindictive, and not supported by the evidence—fail to present any claim upon which relief can be afforded. In *Cerrano v. Fleishman*, 339 F.2d 929 (2nd Cir. 1964), *cert. denied*, 382 U.S. 855, the Court held:

The evidential matter used and the Commission's method of receiving it, as well as the conclusions reached, were clearly within the area of its exclusive authority and cannot be disturbed.

The Second Circuit cited *Ellmore v. Brucker*, *supra*, in support of its holding.⁸ See also *Cantrell v. United States*, 240 F. Supp. 851, 853 (W.D. S.C. 1965), *aff'd*, 356 F.2d 915 (4th Cir. 1966); *Chafin v. Pratt*, *supra*, at 356.

But appellant asserts that the Commission's decision was in bad faith (Appellant's Brief, p. 6). In this connection we note that appellant states that the July psychiatric examination revealed no disability (*id.* 5-6); and appellant refers to a "routine annual physical examination" in August (*id.* 3, 7). The record does not provide any basis for the first assertion.⁹ As to the second point, relating to the "routine physical examination," we point out that this was not in the record before the Civil Service Commission;¹⁰ and, in any event, such an examination would disclose only such mental disabilities as the person examined would happen to manifest during the short period of the examination, or as to which he would volunteer information.

With more general reference to the claim of arbitrariness, bad faith, and that the retirement effected punishment to appellant for having offered "constructive criticism of his employers" (Appellant's Brief, p. 6), we point out that the Civil Service Commission was the agency responsible for making the determination of disability;

⁸ *Ellmore*, and *Smith v. Dulles*, *supra*, were decided before the enactment of 2266(c) on July 31, 1956. 70 Stat. 759. Even aside from the statute, these cases are dispositive of appellant's claims here.

⁹ Presumably appellant is relying upon a letter written by appellant's counsel in Japan (J.A. 28), which does not support the statement in appellant's brief.

¹⁰ In mentioning this August examination, as well as in other respects, appellant includes in his version of the facts matters beyond the record that was before the Civil Service Commission. Such matters should not be considered by the Court in disposing of this case, for "judicial review of administrative action is limited to matters on which the agency has had an opportunity to pass." *California Interstate Tel. Co. v. Federal Communications Commission*, 117 U.S. App. D.C. 255, 258, 328 F.2d 556, 559 (1964). *Cf. Albertson v. Federal Communications Commission*, 100 U.S. App. D.C. 103, 105-106, 243 F.2d 209, 211-212 (1957).

that the determination was upheld on appeal to the Board of Appeals and Review; and that appellant's employing agency merely made the application for disability retirement. A comparable allegation—of bad faith in effecting an involuntary retirement—was held insufficient to state a claim upon which relief may be granted. *Smith v. Dulles, supra*. The Court of Appeals spoke of the "Commission's independent determination of appellant's total disability." Given the authority and responsibility of the Commission to make its own independent judgments as to disability based on the record before it, we submit that the unsupported allegation that the disability retirement was arbitrary, in bad faith, and vindictive does not state a claim upon which this Court can or should act.

The following facts of record should also be noted, in regard to appellant's claim that the Commission's decisions were arbitrary. Appellant did not avail himself of the right to have a physician obtain a summary of the medical records; did not submit evidence to the Civil Service Commission in connection with his appeal; and stated that he would answer no questions when he reported for a second psychiatric evaluation. In addition to the fact that the finding of the Commission has been made unreviewable by law, appellant's challenge to the finding lacks substance because he has in these respects failed to provide additional information to the Commission in connection with his appeal.

CONCLUSION

The courts have upheld the validity of the procedure followed in this case, which conformed to the governing regulations; and the finding of disability is not judicially reviewable. Therefore, it is respectfully submitted that the judgment of the District Court should be affirmed.

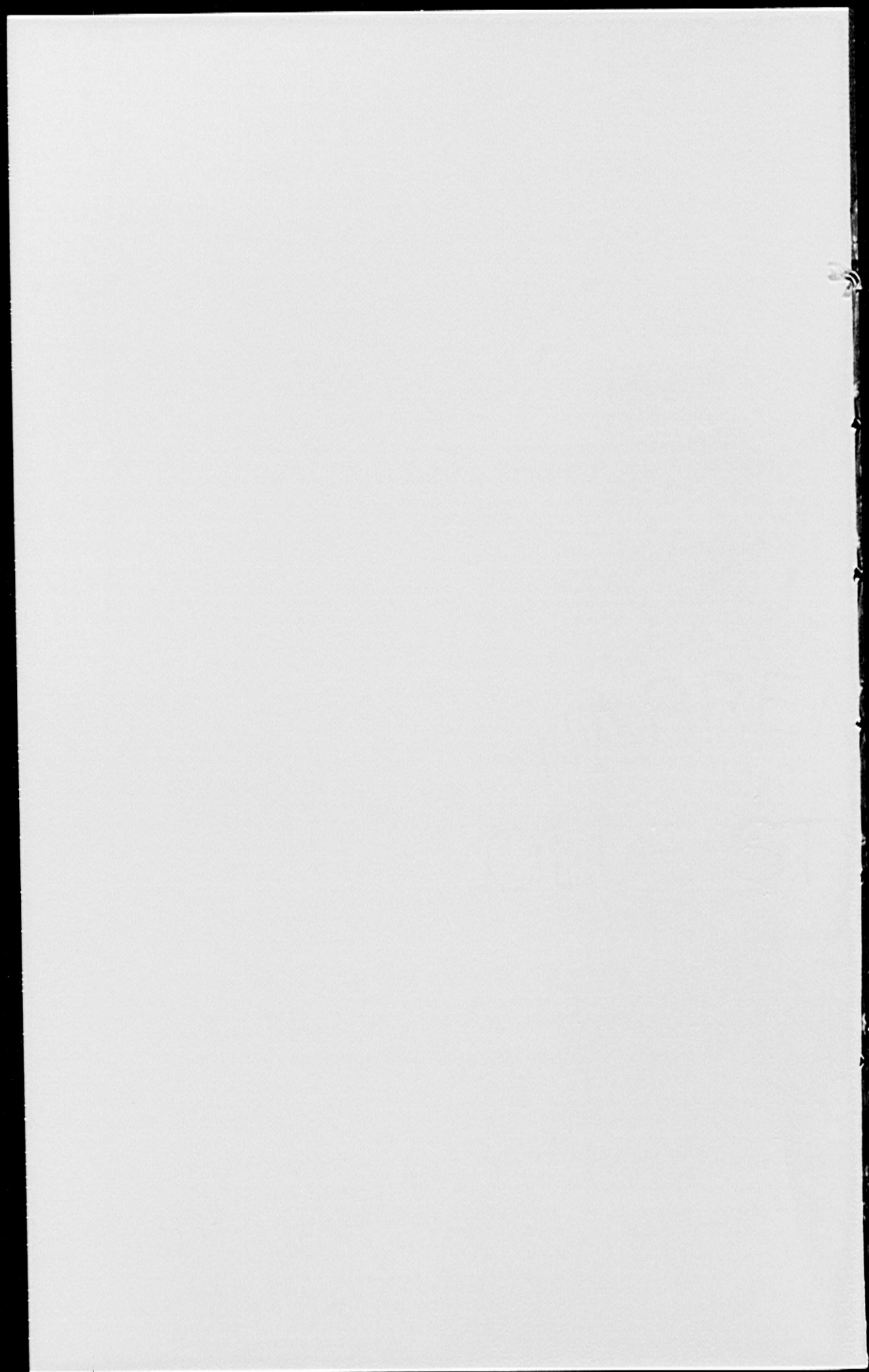
DAVID G. BRESS,
United States Attorney.

FRANK Q. NEBEKER,
NATHAN DODELL,
Assistant United States Attorneys.



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1572-66

MICHAEL URGO, PLAINTIFF

v.

ROBERT S. MCNAMARA, Secretary, Department of Defense

JOHN W. MACY, JR., Chairman, U. S. Civil Service
Commission

L. J. ANDOLSEK, Vice Chairman, U. S. Civil Service
Commission

ROBERT E. HAMPTON, Commissioner, U. S. Civil Service
Commission, DEFENDANTS

DEFENDANTS' STATEMENT OF MATERIAL FACTS
IN SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

Preliminary Statement

This case concerns the involuntary disability retirement of a civil service employee. Plaintiff's employing agency submitted an application for plaintiff's involuntary disability retirement to the United States Civil Service Commission.

The Commission complied with all requirements prescribed by statute and regulation.

Plaintiff is here seeking judicial review of the Commission's decision in the matter. The case presents solely a question of law for determination by the Court. No factual issues are presented for judicial trial outside the certified Civil Service Commission administrative record incorporated into defendants' motion for summary judgment.

While there are no factual issues triable by the Court, we are—for the Court's convenience and in general conformity with Local Rule 9(h)—submitting the following

as a "fair summary" of all the material facts in the case as reflected in the certified administrative records.

1. Plaintiff was a teacher (elementary) with the Department of Defense overseas dependents school system, and was employed at the Nile C. Kinnick School, Yokohama, Japan. By letter dated June 30, 1964, from the Commander, Fleet Activities, Yokosuka, plaintiff was directed to report to the U. S. Naval Hospital for psychiatric evaluation.

2. On or about July 15, 1964, three examining psychiatrists interviewed plaintiff, and a full report was prepared concerning the interviews.

3. On or about July 24, 1964, plaintiff was given an opportunity to request disability retirement. He declined, and the Commander, Fleet Activities, Yokosuka, submitted an application for plaintiff's disability retirement.

4. By letters dated August 26 and September 22, 1964, plaintiff was advised by Wilmer C. Haack, Chief of Section, Bureau of Retirement and Insurance, U. S. Civil Service Commission, as follows:

On the basis of your recent examination, it has been determined that you are totally disabled for useful and efficient service in your position and should be retired on annuity. If you wish your annuity payments to begin promptly, please answer questions under Part A and F on the enclosed application, sign your name and return the application directly to this office.

If instead, you desire to appeal from the decision that you should be retired, you are privileged to do so within 30 days from receipt of this letter. Any appeal should be filed in accordance with the enclosed "Rules Governing Appeals" and should be accompanied by any evidence, medical preferred, that you care to submit.

Mr. Haack also advised plaintiff's employing agency that its application had been approved, that plaintiff had been notified of his right to appeal, and that "no action should

be taken to separate the employee for disability retirement until further advised by this office."

5. By letter dated October 10, 1964, plaintiff advised the U. S. Civil Service Commission that he desired to appeal its decision, and requested permission that he or his attorney obtain a copy of the medical examination report.

6. By letter dated October 23, 1964, the CSC Chief, Disability Retirement Section, Medical Division, wrote to plaintiff as follows (in part) :

As for your request for a copy of the medical examination, which formed the basis for the decision of our medical officers in approving your department's claim, being submitted to you or your attorney, the Code of Federal Regulations, Title 5, Part 29.12 does not permit such disclosure of medical records either to you or your attorney.

These medical records are privileged and confidential and are only for the use of our medical officers in evaluating a claim.

Under the regulations, if a request is received from a physician who desires medical information from our file for his own confidential and professional use, a summary of our medical records will be furnished him.

7. In subsequent correspondence with the Civil Service Commission, plaintiff's then-counsel requested a copy of the medical report, and was advised of the reply made in the Commission's letter of October 23, 1964 to plaintiff. The Chief, Disability Retirement Section, Medical Division, by letter of November 20, 1964, also advised plaintiff's counsel that plaintiff was being requested to appear for a further medical examination.

8. By letter dated December 16, 1964, plaintiff's then-counsel wrote to Mr. Wilmer C. Haack, Chief of Section, Bureau of Retirement Insurance, Civil Service Commission, in part as follows:

I read the medical report on which the Commission is seeking to place on Mr. Urgo the stigma that he is "totally disabled from useful and efficient service in

(his) position." I retain a reasonably clear recollection of the contents of that medical report and I unhesitatingly state that, in my humble opinion, the conclusions of that medical report were *NOT* as quoted above. . .

Mr. Urgo informs me that he has been directed to present himself at the psychiatric ward of the U. S. Air Force Hospital at Tachikawa on Friday, the 18th. I have advised him to appear there only because he has been directed to do so. However, I have directed him not to answer any questions asked. I have taken this position because of the manner in which conclusions have been drawn by you and Dr. Tish from the previous report and, therefore, I cannot help but believe that, as in the previous case, erroneous interpretations may well be made of whatever the Air Force doctor(s) may report.

9. Plaintiff appeared at the appointed time and place for psychiatric examination, on December 18, 1964. He stated:

I am appearing before you only because the U. S. Civil Service Office directed me to be present here. I did not come of my own volition.

I, Mr. Michael Urgo, hereby solemnly declare that upon the advice of my attorney, Mr. Harold Oppenheim, of Yokohama, I decline to answer any questions whatsoever or to make any comments concerning my case. I say this explicitly and unequivocally.

A psychiatric examination was not, therefore, performed.

10. Plaintiff did not avail himself of the opportunity of submitting evidence to the Civil Service Commission in support of his appeal.

11. By memorandum dated January 22, 1965, the CSC Chief, Claims Division, Bureau of Retirement and Insurance, advised the Chairman of the Board of Appeals and Review that the Medical Division had reviewed the case in the light of the content of plaintiff's protest, but had concluded that reversal was not warranted.

12. The Board of Appeals and Review, by letter dated January 27, 1965, advised plaintiff and his then-counsel as follows (in part) :

After careful consideration of all the facts in the case, the Board has determined that the medical evidence of record supports a conclusion that Mr. Urgo is totally disabled for useful and efficient service in the position of Teacher within the meaning of the Retirement Act. Accordingly, the action of the Bureau of Retirement and Insurance is affirmed.

13. On January 28, 1965, the CSC Bureau of Retirement and Insurance notified the Commanding Officer, Department of the Navy, U.S. Fleet Activities, Yokosuka, of the CSC decision.

14. Plaintiff was separated from the service for disability retirement, effective March 9, 1965.

15. On March 15, 1965, in response to a request by Congressman Charles S. Joelson that plaintiff be granted a hearing, the Chairman of the Board of Appeals and Review informed Congressman Joelson:

... [Y]ou are advised that the regulations of the Civil Service Commission make no provision for hearings in connection with appeals in disability retirement cases as ordinarily, hearings of this nature serve no useful purpose. Furthermore, the Commission does not have the power of subpoena and cannot compel the attendance at a hearing of doctors or other persons having knowledge of the case. Since the question of whether an employee is totally disabled for useful and efficient service is a medical question, decisions in such cases are made primarily on the basis of the medical evidence in the Commission's files, which includes reports of medical examinations taken by the employee, and the statements of medical doctors who have examined him. Where pertinent, lay testimony may also be considered. In view of the foregoing, your request for a hearing must be denied.

16. By letter dated April 5, 1965, Congressman Joelson urged the Civil Service Commission to arrange another

mental examination for plaintiff. The Chairman of the Civil Service Commission informed Congressman Joelson as follows (in part) :

We would have no objection to arranging a current examination for Mr. Urgo if he so desires. However, such an examination would be for the purpose of determining his present condition, i.e., whether he has recovered from the disabilities evidenced by his examination last July. An examination at this time could not by its very nature be used to controvert the evidence on which the original and appellate decisions were made.

/s/

DAVID G. BRESS
United States Attorney

/s/

JOSEPH M. HANNON
Assistant United States Attorney

/s/

NATHAN DODELL
Assistant United States Attorney

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TELEGRAM, September 23, 1964, from U.S. Civil Service
Commission to Commander, Department of the Navy, U.S.
Fleet Activities.

WWA WWAC 2 CSC
Washington DC 9-23-64 0817R

Commander
Dept of the Navy US Fleet Activities Navy 3923 c/o
Fleet Post Office
San Francisco Calif

Reurtel notice of approval of disability retirement for
Michael Urgo and his 30 day right of appeal was sent to
him at address furnished by your office on all forms con-
nected with your claim (5 Spruce St., Passaic, New Jer-
sey). Our certified letter was received and signed for by
James Urgo on 8/31/64. Duplicate notice being mailed
this date to Michael Urgo at address furnished in your
wire. He will then have 30 days in which to file appeal.

US Civil Service Commission
30 5 8/31/64 30
LSR 0823R

Letter, October 10, 1964, from Michael Urgo to U.S. Civil Service Commission

Michael Urgo,
Nile C. Kinneck Elementary School,
Navy No. 570, Box 8,
F.P.O., San Francisco, Cal.

10 October 1964

U.S. Civil Service Commission,
Washington, D.C. 20415

Ref: RCP:HLH:ab
CSA 859 918

Gentlemen,

I am in receipt of referenced letter from Mr. Wilmer R. Haack, Chief of Section, dated 22 September 1964.

It is my desire to appeal from the decision of the Commission and in pursuance thereof contacted the U.S. Naval Hospital at Yokosuka for a copy of the examination referred to. I was informed that I would have to write to the Commission in order to obtain permission for me, or my Attorney, to receive a copy of the medical examination report.

My attorney, Harold Oppenheim, Esq., 53 Yamashita-cho, Naka-ku, Yokohama, Japan, has informed me that it is vital for us to obtain a copy of the medical examination report in connection with the filing of an appeal in my behalf.

I respectfully request, therefore, that the hospital authorities at Yokosuka be advised by you to release a copy of the report to me, or Mr. Oppenheim, (with a copy of said letter going to me or my attorney); or that this matter be otherwise handled by you to the end that a copy

of the report be made available to my attorney in order that an appeal may be filed in my behalf.

The referenced letter dated 22 September 1964 was received by me on 28 September 1964. My attorney had been erroneously informed that I could pick up a copy of the examination report. It was not until today that it was learned that said information was incorrect and that it would be necessary for me to write the Commission for permission to obtain a copy of the report. Thus, it is quite obvious, almost all of the 30 days given to me within which an appeal may be filed will have been exhausted before a copy of the report is obtained. In view of this unfortunate delay, my attorney has suggested that I request the Commission to allow me until 28 November to forward my appeal to Washington.

Your kind cooperation, both with regard to giving permission to obtain a copy of the medical report and having an additional 30 days within which to file my appeal, will be greatly appreciated.

Respectfully yours,

/s/ Michael Urgo

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Letter, October 16, 1964, from Wilmer R. Haack to
Michael Uργο

RCP:HLH:ae

October 16, 1964

CSA 859 918

Michael Uργο
Nile C. Kinneck Elementary School
Navy # 570, Box 8
c/o F.P.O. San Francisco, California.

Dear Mr. Uργο:

This is in reply to your letter of October 10, 1964, stating your desire to appeal from the decision that you are totally disabled for useful and efficient service in your position and should be retired on an annuity.

Your letter has been forwarded to the Medical Division of this Bureau for consideration. Should a favorable decision still not be warranted after a re-examination of all the evidence, your case will be referred to the Commission's Board of Appeals and Review.

Sincerely yours,

WILMER R. HAACK
Chief of Section

c.c. Commanding Officer
Department of the Navy
U. S. Naval Supply Depot
Navy No. 3923
c/o F.P.O. San Francisco, California.
96647

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Letter, October 23, 1964, from Alexander Tish to Michael Uργο

RM:AT:pz
CSA 859 918

October 23, 1964

Michael Uργο
5 Spruce Street
Passaic, N. J.

Dear Mr. Uργο:

I have your letter of October 10, 1964, and wish to notify you that your appeal is now under consideration by the Civil Service Commission.

As for your request for a copy of the medical examination, which formed the basis for the decision of our medical officers in approving your department's claim, being submitted to you or your attorney, the Code of Federal Regulations, Title 5, Part 29.12 does not permit such disclosure of medical records either to you or your attorney.

These medical records are privileged and confidential and are only for the use of our medical officers in evaluating a claim.

Under the regulations, if a request is received from a physician who desires medical information from our file for his own confidential and professional use, a summary of our medical records will be furnished him.

Sincerely yours,

ALEXANDER TISH, M. D.
Chief, Disability Retirement Section
Medical Division

RM:ATish:pz A T 10/23/64

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Telegram, received January 21, 1965, by Civil Service Commission from "COMFLEACT" Yokosuka to "RUECW/OIR."

[U.S. Civil Service Commission, Post Adj. Section,
Jan 22, 1965, Bureau of Retirement & Insurance]

[Received—CSC 1965 Jan 21 PM 4:23
Mail and Comm. Unit]

WWKC022 WWAC WWA 69 C

EUA 186CEB962

PP RUEPGS

ZNR ZOV RUECC 130

PP RUECC

DE RUAUBH 2639 21/0733Z

ZNR

P 210700Z

FM COMFLEACT YOKOSUKA

TO RUECW/OIR

INFO RUECC/U.S. CIVIL SERVICE COMMISSION,
BUREAU OF RETIREMENT AND INSURANCE

RUECH/BUPERS

RUAUDM/COMSTSFE

BT

UNCLAS

MICHAEL URGO NAVY DEPENDENT SCHOOL
TEACHER

A. YOUR 151334Z DEC 64

1. Subject teacher again involved in incidents of irrational behavior which adversely affect moral and discipline in the school. Incident included threat of violence to faculty member. Uργο was ordered to report to hospital for further psychiatric evaluation.

2. Chief Neuro-Psychiatric Department U.S. Naval Hospital Yokosuka who conducted the re-evaluation states

A 13

that there has been and evident deterioration in subjects mental condition which could terminate in acts of physical violence. He recommends medical air evacuation.

3. Statements regarding latest incident and medical re-evaluation being forwarded by air mail.

4. Anticipate subject will refuse medical air evacuation. Advise procedure to be taken in this event.

5. Retention of subject teacher overseas in critical problem requiring immediate solution. Request priority consideration which will result in Urgos immediate removal from the Far East area.

BT

KAY 1234R

CCTN line 2 2nd statements vice tatements